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6 Attorneys for Duracell U.S. Operations, Inc.  
7 incorrectly named as Duracell, Inc.

8 **IN THE UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 MICHAEL RUSSO, an individual,  
11  
12 Plaintiff,

13 vs.

14 DURACELL INC., a Foreign Entity;  
15 SENNHEISER ELECTRIC CORP, a Foreign  
Entity, DOES 1 through 20; ROE BUSINES  
16 ENTITIES 1 through 20,

17 Defendants.

CASE NO. 2:21-cv-1403

**Defendant Duracell U.S. Operations, Inc.'s  
(incorrectly named as Duracell, Inc.) Petition  
for Removal**

18 TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE  
19 DISTRICT OF NEVADA:

20 Defendant, Duracell U.S. Operations, Inc.'s (incorrectly named as Duracell, Inc.),  
21 respectfully petitions the Court for an Order removing the above-entitled action to the United States  
22 District Court and alleges as follows:

23 1. Duracell U.S. Operations, Inc. and Sennheiser Electric Corp. are the Defendants in the  
24 above-entitled action.

25 2. The above-entitled action was commenced against Defendants on April 8, 2021, in the  
26 Eighth Judicial District Court, Clark County, Nevada, and is now pending in such Court as Case No.  
27 A-21-832494-C.  
28

1           3.       A copy of the Summons and Complaint has never been served on Duracell U.S.  
2 Operations, Inc. Attached are all of the pleadings which have been filed in the Eighth Judicial  
3 District Court.

4           4.       Duracell U.S. Operations, Inc. does not know when the Summons and Complaint was  
5 served on Sennheiser Electric Corp.

6           5.       Plaintiff alleges that this action is a result of defective wireless headphones and a  
7 battery which were designed, tested and manufactured by Sennheiser Electric Corp. and Duracell  
8 U.S. Operations, Inc., respectively. As a result of these defects, Plaintiff alleges that he has sustained  
9 certain damages as outlined in Paragraph 6 below.

10          6.       The amount in controversy exceeds \$75,000. In support of the claim that the amount  
11 in controversy exceeds \$75,000, Duracell U.S. Operations, Inc. states as follows:

12               A) On July 15, 2021, Plaintiff filed a Request for Exemption from Arbitration in  
13 which he stated that the amount in issue is in excess of \$50,000. In the Request  
14 for Exemption, Plaintiff outlined the evidence in support of this allegation.

15                   1) Permanent hearing loss to the left ear, which is termed "severe."

16                   2) Constant ringing in the left ear which wakes him up while sleeping, thereby  
17 essentially ruining his life.

18                   3) Plaintiff has been unable to pursue being a musician.

19               B) Plaintiff's Complaint alleges the following:

20                   1) Plaintiff has suffered emotional and psychological damage such as  
21 depression, anxiety and fear among others.

22                   2) Plaintiff is alleging lost income and loss of earning capacity.

23          7.       There is diversity of citizenship between Plaintiff and Defendants and this Court has  
24 jurisdiction over the above-entitled action pursuant to 28 USC § 1332 and 28 USC § 1441:

25               A) Plaintiff Michael Russo is a resident and citizen of Clark County, Nevada.

26               B) Duracell U.S. Operations, Inc. is a Delaware corporation with its principal place  
27 of business in Chicago, Illinois.

1 C) Based on information and belief, Sennheiser Electric Corp. is a Delaware  
2 corporation with its principal place of business in Old Lyme, Connecticut.

3 8. The removal is timely. The removal is timely as Duracell U.S. Operations, Inc. has  
4 not been served with the Complaint. Additionally, the removal is timely as it is being filed within  
5 thirty (30) days of Plaintiff's July 15, 2021 Petition for Exemption from Arbitration. *See* 28 USC  
6 1446(b).

7 9. The Co-Defendant, Sennheiser Electric Corp., has consented to removal.

8 WHEREFORE, Duracell U.S. Operations, Inc. requests that the above-entitled action be  
9 removed from the Eighth Judicial District Court, Clark County, Nevada to this Court.

10 DATED this 27<sup>th</sup> day of July, 2021.

11 STEPHENSON & DICKINSON, P.C.

12 

13 By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I hereby certify that I am an employee of STEPHENSON & DICKINSON and that on this 27<sup>th</sup> day of July, 2021, I caused to be served a copy of the foregoing: **Defendant Duracell U.S. Operations, Inc.'s (incorrectly named as Duracell, Inc.) Petition for Removal** on the party(s) set forth below by:

\_\_\_\_\_ Electronic service pursuant to NECFR 9

\_\_\_\_\_ Placing an original or true copy in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage prepaid, following ordinary business practices;

\_\_\_\_\_ Facsimile transmission only, pursuant to the amended Eighth Judicial District Court Rule 7.26

  X   Case Management/Electronic Case Filing (CM/ECF)

\_\_\_\_\_ Hand Delivery – Receipt of Copy

addressed as follows:

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